

¹ 5 U.S.C. § 8101 *et seq.*

shoulder injury due to lifting a heavy car seat at work. OWCP accepted appellant's claim for sprain of the rotator cuff right shoulder and a sprain of his right upper arm.

Appellant continued to work for the employing establishment on a full-time basis. He stopped work to undergo OWCP-authorized right shoulder surgery on March 1, 2013 which included rotator cuff repair, complete synovectomy, acromioplasty, and distal clavicle resection. The surgery was performed by Dr. Steven Nolan, an attending Board-certified orthopedic surgeon.² Appellant received disability compensation on the daily rolls beginning March 12, 2013 and on the periodic rolls beginning April 7, 2013.

On March 26, 2014 Dr. Nolan released appellant to perform modified work on a full-time basis beginning on April 1, 2014 with work restrictions of performing each of the activities of walking, standing, twisting, pushing, and pulling for up to two hours and lifting for up to one hour. He indicated that appellant could not squat, kneel, bend, or stoop. Dr. Nolan indicated that the restrictions would last for three months.

On March 31, 2014 the employing establishment offered appellant a temporary light-duty assignment which involved performing modified duties including directing passengers through the airport security process and watching security monitors. The assignment allowed the employee to switch between standing, sitting, and walking as personally needed and required occasional lifting of a radio weighing less than two pounds and some other items weighing up to five pounds. The employing establishment advised that appellant chose to resign rather than to accept the offer and provided a copy of a form containing appellant's March 31, 2014 rejection of the offer.³ Appellant indicated on the form that even though his physician felt that he could return to light-duty work, he was still having issues with his left knee.

In an April 8, 2014 medical disability note, Dr. Nolan provided an opinion that appellant had recovered sufficiently such that he could return to his regular work on a full-time basis as of March 26, 2014.

On May 13, 2014 the employing establishment confirmed that the temporary light-duty assignment offered to appellant remained available.

By notice dated May 14, 2014, OWCP advised appellant that it proposed to reduce his wage-loss compensation on the basis of his rejection of the temporary limited-duty assignment offered him by the employing establishment as a transportation security officer.⁴ It found that

² Under a separate claim file, OWCP accepted in 2007 that appellant sustained an occupational disease in the form of joint effusion of his right elbow. Also under a separate claim file, it accepted that he sustained a medial meniscus tear of his left knee on January 24, 2013 when he slipped on a step. Appellant underwent OWCP-authorized left knee surgeries in September 2013 and January 2014. The files for these conditions have been combined with the file for the present claim.

³ A Form SF-50 (Request for Personnel Action) dated April 1, 2014 indicates appellant had resigned from his employment effective that date.

⁴ OWCP indicated that appellant's entitlement to medical benefits for his accepted work injuries would not be affected.

the assignment was appropriate and within appellant's medical restrictions. OWCP provided appellant 30 days to accept the assignment or provide a written explanation for not doing so. It pointed out that appellant's failure to accept the assignment without good cause would justify termination of his wage-loss compensation under 20 C.F.R. § 10.500(a).⁵

In a Form EN-1032, dated August 4, 2014, appellant indicated that he worked briefly as a driver for a private freight company from April 14 to May 9, 2014.

In an April 17, 2015 decision, OWCP terminated appellant's wage-loss compensation effective April 17, 2015. It noted that appellant had not accepted the temporary light-duty assignment offered by the employing establishment which was within his medical restrictions and found that, therefore, the termination of his wage-loss compensation was justified under 20 C.F.R. § 10.500(a).

Appellant requested a hearing with an OWCP hearing representative regarding the termination of his wage-loss compensation. He submitted a June 29, 2015 report in which Dr. Nolan noted that he complained of pain and swelling in his left knee.

At the hearing held on November 12, 2015, appellant testified that his physician told him in March 2014 that he would have to release him back to work because OWCP would otherwise make him meet with one of their doctors and then put him back to work at full duty. He reported that he had a lot of pain in his left knee and therefore he told the employing establishment that he was resigning rather than accepting the light-duty position which he knew he could not perform. Appellant testified that he briefly worked as a truck driver "just delivering stuff," but that he had problems with his left knee that prevented him from continuing in the position.

By decision dated January 28, 2016, OWCP's hearing representative denied modification of OWCP's April 17, 2015 decision terminating appellant's wage-loss compensation effective April 17, 2015. She indicated that appellant had not accepted a temporary light-duty assignment offered by the employing establishment which was within his medical restrictions. The hearing representative found that, therefore, the termination of appellant's wage-loss compensation effective April 17, 2015 was justified under 20 C.F.R. § 10.500(a).

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁶ OWCP may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the

⁵ On June 2, 2014 appellant told an OWCP claims examiner *via* telephone that he would accept the temporary light-duty assignment offered by the employing establishment. The record also contains a June 2, 2014 statement to this effect that appellant sent to OWCP.

⁶ *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

employment.⁷ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

Section 10.500(a) of the Code of Federal Regulations provides:

“(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee’s work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a [Form] CA-7 to the extent that evidence contemporaneous with the period claimed on a [Form] CA-7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing [establishment] had offered, in accordance with OWCP procedures, a temporary light-duty assignment within the employee’s work restrictions.”⁹

ANALYSIS

OWCP accepted that on August 30, 2012 appellant sustained a sprain of the rotator cuff of his right shoulder and a sprain of his right upper arm. On March 1, 2013 Dr. Nolan performed OWCP-authorized right shoulder surgery which included rotator cuff repair, complete synovectomy, acromioplasty, and distal clavicle resection.

On March 31, 2014 the employing establishment offered appellant a temporary light-duty assignment which involved performing modified duties including directing passengers through the airport security process and watching security monitors.¹⁰ The physical restrictions were consistent with the treating physician’s restrictions. In April 17, 2015 and January 28, 2016 decisions, OWCP noted that appellant had not accepted the temporary light-duty assignment which was within his medical restrictions and found that, therefore, the termination of his wage-loss compensation effective April 17, 2015 was justified under 20 C.F.R. § 10.500(a).

The Board finds that OWCP properly terminated appellant’s wage-loss compensation effective April 17, 2015. Appellant did not accept the temporary light-duty assignment offered by the employing establishment which was within his medical restrictions. He refused the

⁷ *Charles E. Minniss*, 40 ECAB 708, 716 (1989).

⁸ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁹ 20 C.F.R. § 10.500(a).

¹⁰ The assignment allowed the employee to switch between standing, sitting, and walking as personally needed and required occasional lifting of a radio weighing less than two pounds and some other items weighing up to five pounds.

assignment on March 31, 2014 and resigned from the employing establishment effective April 1, 2014. Therefore, the termination of appellant's wage-loss compensation effective April 17, 2015 was justified under 20 C.F.R. § 10.500(a).¹¹

The Board finds that the medical evidence of record shows that appellant could perform the temporary light-duty assignment offered by the employing establishment. On March 26, 2014 Dr. Nolan released appellant to perform modified work on a full-time basis beginning on April 1, 2014 with work restrictions of performing each of the activities of walking, standing, twisting, pushing, and pulling for up to two hours and lifting for up to one hour.¹² In an April 8, 2014 medical disability note, Dr. Nolan found that appellant had recovered sufficiently such that he could return to his regular work on a full-time basis as of March 26, 2014.

On appeal appellant alleges that he did not have an opportunity to accept the temporary light-duty assignment offered by the employing establishment.¹³ However, the record reveals that appellant had an opportunity to accept the temporary light-duty assignment, but he explicitly rejected it on March 31, 2014 and resigned effective April 1, 2014.

The evidence of record reflects that appellant failed to accept a temporary light-duty assignment offered by the employing establishment which was within his medical restrictions and, therefore, OWCP properly terminated his wage-loss compensation effective April 17, 2015 under 20 C.F.R. § 10.500(a).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation effective April 17, 2015.

¹¹ See *supra* note 9.

¹² Dr. Nolan also indicated that appellant could not squat, kneel, bend, or stoop.

¹³ *Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board